

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :

Technical Amendment :

Rulemaking : Public

: Hearing

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APRIL 29, 2015

The Alcoholic Beverage Control Board

met in the Alcoholic Beverage Control Hearing

Room, Reeves Building, 2000 14th Street N.W.,

Washington, D.C., Chairperson Ruthanne Miller,

presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

DONALD BROOKS, Member

NICK ALBERTI, Member

HECTOR RODRIGUEZ, Member

MIKE SILVERSTEIN, Member

JAMES SHORT, Member

HERMAN JONES, Member

1 P-R-O-C-E-E-D-I-N-G-S

2 11:35 a.m.

3 CHAIRPERSON MILLER: Okay, the next
4 rulemaking hearing is on what's called our
5 Technical Amendment Rulemaking.

6 Whoever is -- let's see, Mr. Kline, I
7 believe you signed up to testify. Mr. Pascal and
8 somebody else, yes, from the Black Cat, yes. So,
9 you can come forward while I'm reading this, if
10 you like.

11 MR. KLINE: Thank you.

12 CHAIRPERSON MILLER: We're here today
13 pursuant to D.C. Official Code 25-211(b) to
14 conduct a public hearing and take comment on
15 amendments adopted by the Board on February 25,
16 2015, to a proposed rulemaking that makes several
17 changes to Title 23 of the District of Columbia
18 Municipal Regulations.

19 The amended proposed rulemaking, the
20 Technical Amendment Rulemaking, makes several
21 changes to a number of Chapters within Title 23
22 to conform to those corollary changes contained

1 in the Omnibus Alcoholic Beverage Regulation
2 Emergency Amendment Act of 2014.

3 Additionally, this rulemaking makes
4 other administrative changes, not related to the
5 Act.

6 I will begin this hearing by calling
7 on those witnesses who notified the Agency in
8 advance, regarding their desire to address the
9 Board. Each witness will be granted no more than
10 five minutes to speak, of course, that doesn't
11 include Board questions.

12 The Board will then entertain comments
13 from other interested parties who did not
14 register in advance, but who wish to be heard.

15 If there's any time left at the end of
16 the hearing, the Board may consider granting
17 additional time to individuals.

18 If you have prepared written remarks,
19 please hand them to Ms. Jeanette Walker and
20 she'll ensure that they are properly filed.

21 After the Board convenes this hearing
22 today, the record will remain open for interested

1 parties to submit additional comments.

2 Okay, so, let's start with
3 introductions. Mr. Pascal?

4 MR. PASCAL: Bill Pascal, representing
5 the District of Columbia Association of Beverage
6 Alcohol Wholesalers.

7 MR. KLINE: Good morning. Andrew
8 Kline on behalf of Restaurant Association,
9 Metropolitan Washington.

10 MR. FERRANDO: Dante Ferrando from
11 Black Cat and Live Performance Coalition.

12 MS. FERRANDO: Katherine Ferrando,
13 also from the Live Performance Coalition and
14 Black Cat.

15 MS. FARLEE: Coralie Farlee, ANC
16 Committee, ANC 6.

17 CHAIRPERSON MILLER: Okay, why don't
18 we start with Mr. Pascal?

19 MR. PASCAL: Good morning.

20 CHAIRPERSON MILLER: Good morning.

21 MR. PASCAL: I am President and
22 General Counsel of the District of Columbia

1 Association of Beverage Alcohol Wholesalers, and
2 on behalf of this association, thank you for the
3 opportunity to comment on the proposed technical
4 amendments to Title 23 of the DCMR.

5 We had previously testified before the
6 ABC Board at a public hearing on November 13th,
7 commenting on the initially proposed rules, while
8 the Board subsequently made important amendments
9 based on the comments of local business groups
10 and civic associations, but unfortunately, did
11 not address many of the issues that we raised.

12 At this time, we are requesting that
13 the Board revisit the following concerns.

14 First, the proposed licensing
15 exemption in 23 DCMR 213.1 presents serious
16 challenges to wholesalers in identifying who is
17 qualified for the exemption. It places a
18 significant burden on wholesalers to ensure
19 compliance with D.C. Official Code 25-102(a)
20 which prohibits wholesalers from selling to an
21 unlicensed person other than a consumer of wine
22 and malt beverages.

1 To protect wholesalers from committing
2 an unintended violation of D.C. Official Code 25-
3 102(a), the Board should require the unlicensed
4 entity to give proof of sale through signing an
5 affidavit of notice of sufficient information on
6 who the buyer is.

7 Second, the proposed 45 day window for
8 an applicant to submit all supporting
9 documentation for an ABC application described in
10 23 DCMR 500.2 and the proposed 15 day window for
11 applicants to submit supplemental documentation
12 for an ABC application described in DCMR 500.3
13 are unrealistic deadlines to impose upon ABC
14 applicants.

15 The proposed deadlines unreasonably
16 penalize an applicant for circumstances and
17 delays that are beyond the applicant's control.

18 For example, delays can arise through
19 inspection scheduling, as well as through
20 unforeseen complications involving corporate
21 entity filings. To account for these days, the
22 Board should consider lengthening the submission

1 period and to set forth a process where
2 applicants may request an extension of such
3 deadline before an application is deemed
4 applicant withdrawn.

5 Finally, DCABAW strongly recommends
6 that prior to the issuance of a cease and desist
7 order under 23 DCMR 808.1, that the Board should
8 provide notice to the ABC licensee, to allow time
9 to cure, to prevent drastic disruptions to
10 business operations, especially in instances of
11 unintentional oversight.

12 A lapse in an entity's status is known
13 to occur as a result of circumstances that are
14 out of the entity's control. One common culprit
15 is the registered agent's failure to transmit
16 timely notices. Another is the delay that
17 businesses face in obtaining documents and
18 licenses from other District agencies, as the --
19 as well as the occasion failure of these agencies
20 to notify them of the expiration of their
21 licenses, including language that would allow a
22 license holder to restore its status within a

1 period of time before the issuance of the cease
2 and desist order were protected against the loss
3 of revenue, preserve its good standing and enable
4 it to maintain its operations as it seeks to
5 correct underlying documentation and other
6 Agency-issued licenses.

7 On behalf of DCBA, thank you for
8 considering the recommendations of D.C.
9 Wholesalers. Should you have any questions or
10 concerns, feel free to contact our office.

11 I'd like to add just a couple other
12 comments.

13 In Section 606 of the proposed
14 regulations deals with LLC's. LLC's can be a
15 complicated issue because there are many
16 structures where you have structured LLC's where
17 the license will be in one LLC, then it will be
18 owned by another single member LLC, and I've seen
19 cases where there is five layers of LLC's and the
20 final one is a publically traded company.

21 Each of the examiners have their own
22 way of dealing with this, when you file an

1 application and you never quite know what you
2 need to submit, you know, whether you have to
3 have the SEC filing, which doesn't seem
4 necessary, or whether you can just go to the
5 second level, which is really the real owner of
6 the first level.

7 So, that's something that has to be
8 hashed out. I finally understood what was
9 proposed in the regulations, when Ms. Moosally
10 explained it to me.

11 So, I have no problem with what's
12 there now, but I think you need to deal further,
13 because it's a real nightmare for some of us to
14 do licensing on a regular basis.

15 Finally, this whole process takes too
16 much time. There are many good recommendations
17 in there. There are many times that I'll pick up
18 the phone and call to Fred and say, "You know,
19 I've got a good idea," but then the time that I
20 call and say, "Here is something that will really
21 be beneficial," or something that he thinks is
22 beneficial, to consummation, you know, we started

1 this back in the Fall, so, it was published
2 before that. We're here today.

3 You now have to finally publish it.
4 I guess there is a way -- City Council review
5 that they can change things, so, we're talking
6 about maybe some sensible things that before it's
7 all over, was going to take a year, and there's
8 got to be a better way to put into effect, some -
9 - especially some things that practitioners, such
10 as Andrew and I, when we see on a regular basis
11 and we make a suggestion, it may not go into
12 effect for a year, and that doesn't make sense.

13 So, what it's worth, that's my
14 comment.

15 CHAIRPERSON MILLER: Okay, so, I think
16 the way we'll proceed is, we'll hear from
17 everybody and then come back with questions.

18 MR. PASCAL: Certainly.

19 CHAIRPERSON MILLER: Okay, Mr. Kline?

20 MR. KLINE: Good morning. Andrew
21 Kline on behalf of Restaurant Association
22 Metropolitan Washington.

1 RAMW, when I heard this last time, we
2 had over 800 restaurant members, restaurant and
3 food supplier members. Now, we have over 950.

4 CHAIRPERSON MILLER: How many?

5 MR. KLINE: Nine-hundred-fifty
6 members, of which 500 are restaurants located
7 within the District of Columbia.

8 RAMW, we believe, is considered the
9 principle spokesperson for hospitality interests
10 in the District of Columbia, and our members
11 range from traditional white tablecloth fine
12 dining establishments, to more casual eateries,
13 taverns, nightclubs and other kinds of venues.

14 I have not, at this point, prepared
15 written testimony, because I did in the Fall, and
16 in reading the proposed rulemaking, it seemed
17 that whoever prepared the proposed rulemaking did
18 an excellent job of summarizing my testimony. In
19 fact, I read it and I said, "Who is this eloquent
20 guy who has got all these great ideas," and it
21 turned out to be me.

22 But unfortunately, it seems that a

1 number of them were not incorporated into the
2 rulemaking, which is very disappointing, and
3 there are -- I want to focus on three issues that
4 were in the original rulemaking and one new
5 issue.

6 With respect to cease and desist and
7 the changes that the Board proposes there, it
8 seems that we have a solution in search of a
9 problem here.

10 I don't really understand why is it
11 that the Board feels that these changes are
12 necessary. I'm not sure what problem is being
13 addressed, and I haven't heard anything in the
14 testimony or from the Board, about problems.

15 If there are issues with compliance in
16 other areas, we explained the last time we were
17 here, that dealing with the myriad of agencies in
18 the District of Columbia, that regulate these
19 establishments, is uneven, to be kind.

20 Not everyone does it as well as this
21 Agency, and in terms of having time frames -- and
22 I understand it says that the Board may, but I

1 guess the question is, well, why does the Board
2 need to?

3 I mean, ultimately, if someone has
4 their restaurant license suspended or revoked or
5 whatever the case may be, the Board is in a
6 position to deal with that, and I'm simply not
7 aware, and maybe the Board is and maybe there is
8 something more than I'm aware of, of a lot of
9 situations that are covered by these proposed
10 cease and desist, where the Board has found
11 itself powerless to act. I'm really sort of
12 unclear as to what the reason for that is.

13 Secondly, with respect to abandonment
14 of applications, we spoke about that last time.

15 Our issue there is, we have our own
16 frustrations in terms of time periods with Agency
17 staff. The length of time that it now takes
18 placards -- takes to get placards is an
19 inordinately long -- it's -- I mean, it's you
20 know, if we push, we get them in four or five
21 weeks, and it just seems the front end of the
22 process is dragging.

1 So, to now come in and say, "All
2 right, we're going to put this these fixed time
3 frames for applicants to do things," without any
4 countervailing restrictions on the Agency, just
5 seems completely unfair.

6 I have asked for quite a period of
7 time, what our expectation should be, for
8 example, in getting placards. Is there a
9 standard? What's the standard, so we know when
10 we should scream, but I haven't gotten that.

11 So, I don't -- I can't even tell
12 clients when the Agency says the date is by which
13 we should get placards after we filing, and
14 that's very troubling and very frustrating, for
15 people that are investing, in some cases, several
16 hundred thousand or millions of dollars in the
17 District of Columbia.

18 Service by email, we applaud this, but
19 made some points last time that we think are
20 very, very important, and in thinking about this
21 further, and I don't think I focused on it last
22 time, the other issue is, everyone maintains an

1 email account, it has a spam filter, and
2 sometimes, we have trouble getting emails that we
3 want to get, but because of the spam filter, we
4 don't get that.

5 It just makes common sense that if we
6 are going to do service by email, that there be a
7 designated address from which these emails would
8 come, so that you can white-list that address and
9 you can be fully assured of getting the
10 communications that you need to move forward with
11 your license application, and this was detailed
12 in my last testimony, and it seems to have all
13 been ignored. None of it was incorporated into
14 the rulemaking.

15 Lastly, I need to talk about the
16 proposed expansion of the definition of
17 egregious, for purposes of determining when
18 licensees get warnings on first offense sale to
19 minor charges.

20 I believe this represents at least the
21 third attempt by the Board, to expand the
22 definition of egregious, and therefore, narrow

1 the circumstances under which licensees get
2 warnings for first offense sale to minors.

3 Now, I don't understanding the Board's
4 hostility to written warnings. It's palpable.
5 It's been demonstrated in the evidence over a
6 period of five years. When we had mandatory
7 written warnings on minor first offense, the
8 Board dragged its feet, in terms of doing
9 rulemaking for almost five years. I mean, so I
10 think the hostility is pretty evident.

11 In terms of the sale to minors, and
12 speaking to the Director, I'm told the warning
13 system works pretty well. So, I don't know why
14 it is that the Board thinks we need to go back
15 and keep tinkering with the warning system, if it
16 works pretty well.

17 I understand that we're concerned
18 about sale to minors. We all are. We want our
19 members in compliance. But the importance of
20 education that comes from a warning cannot be
21 overstated, and I simply -- this is another one
22 of those where there are there a lot of cases where the

1 Board has had problems, where they haven't been
2 able to properly discipline or enforce against
3 licensees?

4 I'm unaware of them. Perhaps, the
5 Board has different experiences. I'm not here
6 for every case. I'm not here every Wednesday.
7 I'm here a lot of them, but I don't know of a
8 situation which would cause the Board to keep
9 coming back and cut back on these -- on the
10 mandatory Board warnings.

11 Our association, my direction from my
12 association is to fight this, and we will here
13 and at the Council, if this is included in the
14 rulemaking, and if it causes the whole rulemaking
15 to fail, that would be unfortunate, but those are
16 my instructions at this point, and we just do not
17 understand why there is such hostility by this
18 Board, to the concept of warnings in first
19 offense situations.

20 Thank you. I'm happy to take any
21 questions that the Board has, at the conclusion
22 of the other -- the other testimony.

1 CHAIRPERSON MILLER: Thank you.

2 MR. FERRANDO: Hi. I'm Dante
3 Ferrando. I'm one of the owners and operate the
4 Black Cat. I'm also a member of the Live
5 Performance Coalition. We've put in some written
6 testimony that addressed three concerns. I'd
7 like to speak to just one of them, what I think
8 is the most important, the cease and desist
9 provision.

10 We think the proposed regs overstep
11 what that statute allows, by expanding the
12 Board's authority to suspend the license in
13 situations such as a basic business license
14 expiring or expiration of good standing or when a
15 check is bounced.

16 My partner Katherine can probably
17 better address the legal concerns we have. I'd
18 like to talk about the type of situations that
19 often come up while running the business, that
20 could trigger a suspension under 808.1.

21 We currently have four basic business
22 licenses, and at times we've held more basic

1 business licenses than that.

2 In the 25 years that I've owned a
3 liquor licensed establishment in D.C., there have
4 been a number of times where DCRA or another
5 agency has made clerical errors that would have
6 caused us to be in violation of 808.1, and I'll
7 just give you a few examples.

8 There was a point where DCRA issued is
9 duplicate licenses. I believe it was a restaurant
10 license by mistake. We didn't know they had
11 issued two mirroring licenses.

12 So, when we went to renew, we
13 obviously only renewed the one license that we
14 thought we had. So, we were operating with an
15 expired restaurant license for two years, along
16 with a valid restaurant license, which obviously
17 took a long time to clear up.

18 There was another situation more
19 recently, where we had surrendered our basic
20 business license that allows us to sell
21 cigarettes. We didn't think we needed it
22 anymore.

1 So, DCRA did not record it --

2 MEMBER SILVERSTEIN: Can you repeat
3 that?

4 MR. FERRANDO: So, we had a basic
5 business license that allowed us to sell
6 cigarettes, but we had determined we didn't need
7 that license anymore, and so, we handed it back
8 in and we decided we wouldn't have that basic
9 business license anymore to sell cigarettes.

10 But DCRA did not record it as
11 surrendered properly. So, they had it on record
12 as just, we hadn't paid the renewal, where we had
13 actually said, "We don't want this license
14 anymore."

15 A few years followed that. We never
16 got any notification of any sort in back dues or
17 anything, so by the time we discovered that they
18 still had this license, it was about \$1,000 in
19 fees and interest, but we had never been informed
20 that this license had become -- the fees had
21 become due.

22 So, when these types of problems come

1 up, it's fairly infrequent, in my experience,
2 that we get notified by DCRA. Usually, you
3 discover there is a problem only when you go in
4 to renew that license two years later, or
5 potentially go to get a different license that
6 requires the first license to get the second
7 license, and at that point, there has already
8 been penalties and interest and fees assessed.
9 So, there is a complicated dispute between you
10 and DCRA. It frequently takes weeks, or
11 sometimes months, to resolve.

12 There is a host of similar situations
13 that come up with other licensing divisions.

14 We've renewed our good standing, for
15 instance, 12 times since we've been in business.
16 We've been notified that we were suppose to renew
17 it maybe nine times. So, about one-quarter of
18 the time, we didn't get renewal reminders.

19 There is some strange situations like
20 trade name registration, wasn't the thing when we
21 opened. When they decided there was going to be
22 trade name registration, we were told initially,

1 that that would be a permanent trade name
2 registration.

3 Somewhere along the line, they changed
4 that to something that needed to be regularly
5 renewed, but nobody was ever informed that it was
6 something that needed to be regularly renewed, so
7 we wouldn't discover something like that until
8 that license -- the renewal was required for
9 something else, and we would be not in good
10 standing or not have the relevant license for a
11 period of time.

12 Now, I know you guys are going to say
13 that 808.1 will be used -- the provisions in it
14 would be used very infrequently and only in the
15 most extreme circumstances, but I have two things
16 I'd like you to consider.

17 The judgment of this Board may be very
18 wise and sound, but what about your successors?

19 None of the Board was here when we
20 opened, and there's a very good chance that you
21 all will move on to do other things in the
22 future.

1 So, the Board changes regularly and in
2 my experience, the different Boards have taken
3 very different approaches to the way they see and
4 apply the regulations.

5 So, I'd like you to consider not just
6 how you guys would interpret the regulations, but
7 how -- consider how others would use the
8 regulations when deciding what to include and
9 what not to include.

10 Then the second thing I'd say is, the
11 best of judgment is only useful if you have all
12 the facts. Without a provision in here that
13 gives the licensee an opportunity to explain
14 their specific situation, you're relying
15 potentially, solely on the information from DCRA
16 or the other licensing division, to be able to
17 make an informed decision, which is inadequate.

18 So, I have three potential fixes I
19 would propose, any of which I think could solve
20 the problem.

21 Either do away with the parts of 808.1
22 that refer to expired licenses and bounced checks

1 completely, or require a Show Cause hearing
2 before you guys take action to suspend something,
3 so that you can get all the information, or
4 potentially require that the Agency that is
5 referring this license problem to you, has had
6 some form of due process, before you guys take
7 action on it, because I think due process in this
8 case is very important to clear up any
9 misunderstandings.

10 Thank you for the opportunity to
11 speak.

12 CHAIRPERSON MILLER: Thank you very
13 much.

14 MR. FERRANDO: Thank you.

15 MS. FERRANDO: Good morning, Chairman
16 and Members of the Board.

17 CHAIRPERSON MILLER: Good morning.

18 MS. FERRANDO: I'm Katherine Ferrando.
19 I'm also co-owner of Black Cat and here as part
20 of the Live Music Coalition, which I don't know
21 if Dante so explained that. It's a new group,
22 just of live music clubs.

1 I'm here also just to talk about the
2 cease and desist provision, although I would
3 endorse the remarks that Mr. Kline made to you.
4 I think he raised a lot of good points.

5 It appears that the new cease and
6 desist provision in the regulations is designed
7 to implement the Omnibus bills seizure section
8 25-801(g). That section allows the Board to
9 clean up old outstanding licenses by seizing
10 licenses which are no longer or should no longer
11 be in use at all, and the statute lays it out
12 very clearly, that there is three categories that
13 -- where the business just doesn't exist anymore,
14 or the Government has -- in two categories, where
15 the Government has basically closed the business
16 down.

17 It's at that point, after a business
18 has been closed, you're at the end of the
19 procedural due process. The business has been
20 shut down and ABRA is just sort of tying up loose
21 ends.

22 But the proposed rulemaking appears to

1 be, to me, entirely different than that concept.
2 It allows the Board to issue cease and desist
3 orders when there are administrative problems
4 that have cropped up, but before the Government
5 has yet taken any action against the business.

6 There is no requirement in the
7 rulemaking itself, as far as I can see, of a
8 notice or hearing of any kind, yet the Board
9 could issue the cease and desist order.

10 The D.C. Code does allow cease and
11 desist orders to be issued in that immediate way,
12 in another code section that already exists, but
13 in that section, it requires a risk of immediate
14 and irreparable harm to the public, and so,
15 therefore, the frame work in the D.C. Code with
16 this -- either the seizure provision, the new one
17 or the cease and desist provision, recognizes the
18 due process right, as it's required to, because
19 it's some law that a license to do business is
20 property, and it has those procedural
21 protections.

22 A cease and desist order can be a very

1 temporary thing, but for a live music venue in
2 particular, it's a lot more than just a lost
3 revenue for that night. Not only do you have the
4 lost revenue, you have to refund every ticket.
5 You have to pay the band in full, and you become
6 immediately, at least technically, contractually
7 liable to every band on that booking agent's
8 roster, to pay them up front for -- and we're
9 booked usually out for about nine months. So,
10 that could be \$100,000 right there, which you
11 would have to technically immediately pay.

12 But the most important -- damaging
13 part would be that you could get black-listed by
14 the booking agents, if you don't put on the show,
15 especially if it's an important one.

16 If you're a smaller or a newer
17 business, you could basically end up not being
18 able to work with any of the big booking agents
19 anymore. But someone like Black Cat, we could
20 probably weather it, but we'd be digging our way
21 out of a hole for a long time.

22 The proposed rulemaking suspends due

1 process in the absence of any emergency or strong
2 Governmental interest, and imposes that -- that
3 penalty, which really could be significant.

4 So, the statutory frame work, as I see
5 it, doesn't authorize that procedural change and
6 perhaps more importantly, I think that change
7 infringes on the right to procedural due process,
8 and if challenged, I don't think it would hold
9 up.

10 The rulemaking uses the cease and
11 desist language, but since it doesn't follow any
12 of the requirements in the statute of that
13 irreparable harm to the public, it's unclear to
14 me, actually which provision of the statute the
15 Board is implementing, and I am -- you know,
16 readily admit, this is not an area of law I've
17 practiced in. This is just based on my reading
18 of the rulemaking and statute.

19 But if it is intended to implement the
20 new seizure provision, and it does echo some of
21 that language, it needs to mirror the language of
22 that statute, that new statutory provision, and

1 if you compare the two, you see a huge
2 disconnect.

3 The seizure section of the statute
4 spells out very specifically, when an ABRA
5 violation, in particular could result in seizure.
6 It has to be when there is a suspension,
7 revocation or cancellation of a license, at --
8 not -- excuse me, not when a payment is late or a
9 check has been bounced, as in the rulemaking, and
10 the omnibus bill also allows seizure where
11 another agency has closed the business, and it
12 uses that language 'closed', as opposed to the
13 rulemaking, which has a laundry list of errors
14 that in no way, equate to closure.

15 An expired license -- expired
16 certificate of occupancy or lack of good
17 standing, as Dante was explaining, don't signify
18 that due process has been provided the way that
19 closure does. It doesn't even mean that notice
20 has even been given.

21 At a minimum, you need notice and an
22 opportunity to be heard, in order for that

1 procedural due process to be given.

2 Bounced checks and expired licenses
3 could, of course, ultimately result in suspension
4 or closure, but only after those procedural steps
5 have been taken.

6 In our view, ABRA needs to follow its
7 own established procedures to address
8 administrative problems and violations that come
9 up, and other agencies should follow their own
10 processes, and suspend licenses as needed.

11 If other agencies need to turn to ABRA
12 for enforcement of their own rules, then they
13 should be -- it should be after they've provided
14 the notice and an opportunity to be heard, and if
15 ABRA is stepping in before the other agencies
16 have done that, then ABRA needs to provide notice
17 in the hearing, through it's Show Cause provision
18 or it's -- sorry, Show Cause hearing or something
19 along those lines, not just order a cease and
20 desist, based on its own discretion in the
21 absence of a full set of facts.

22 The Council did not take away those

1 procedural due process rights and absent imminent
2 public safety risks, ABRA does not have authority
3 to do so either.

4 CHAIRPERSON MILLER: Thank you.

5 MS. FERRANDO: Thank you very much.

6 CHAIRPERSON MILLER: Ms. Farlee?

7 MS. FARLEE: I submitted written
8 comment. This -- my focus is pub crawl section
9 of the proposed changes, and I submitted comments
10 from the ANC committee, which I will read, but I
11 also want to preface those comments by saying I
12 think several things in the present law could be
13 valuable to keep and not replace totally by what
14 is proposed in the rulemaking.

15 My comments about -- that I submitted
16 are six points. That there be at least 60 days
17 in advanced the proposed notifications that
18 affect agencies and registered associations, to
19 provide an opportunity for review, comment and
20 necessary protest.

21 Increase the annual fee for pub crawl
22 to be more comparable to the daily fee for a

1 temporary license, that is something closer to
2 \$100 a day, rather than \$150 a year.

3 Increase the -- institute a
4 requirement for one RDO for every 250 patrons
5 expected or tickets sold.

6 Increase or tighten the criteria for
7 eligibility requirements relative to recent
8 offenses. Now, that assumes that some of the
9 original language is contained, but ABRA would
10 have to modify that, if the whole thing is
11 replaced.

12 Five, allow ANC's to include
13 prohibitions on pub crawls in our CA's, SA's and
14 if the pub crawl will include establishments that
15 have both CR and CT licenses, where the license
16 to carry a pistol amendment act of 2014 allows
17 pistols to be carried, versus prohibits the
18 carry, allows them in CR's and prohibits in CT's,
19 the promoter must make it clear to participants
20 that they are not allowed to carry weapons into
21 the CT venues.

22 Those are my written comments, and as

1 I said, I suggested several things in the
2 existing section of seven -- 712 could be --
3 should be retained.

4 CHAIRPERSON MILLER: Thank you.

5 MS. FARLEE: Thank you.

6 CHAIRPERSON MILLER: Okay, Board,
7 questions?

8 MEMBER ALBERTI: I'm going to start
9 off with -- did you want to --

10 CHAIRPERSON MILLER: What?

11 MEMBER ALBERTI: Can I start off with
12 an easy one?

13 CHAIRPERSON MILLER: Sure, Mr.
14 Alberti.

15 MEMBER ALBERTI: Yes, and this is to
16 Ms. Farlee.

17 With respect to the pub crawls, I'll
18 discuss this with my fellow Board members, but my
19 recommendation will be to -- and my
20 understanding, what was going to be done was, it
21 was that the rest of 712 would remain there.

22 We would insert these -- these new

1 provisions that you see in this -- in this
2 rulemaking, and renumber the rest of the section.

3 MS. FARLEE: I see, but I --

4 MEMBER ALBERTI: And we wouldn't --

5 MS. FARLEE: -- the way it --

6 MEMBER ALBERTI: So, my intent is not
7 to replace all of that.

8 MS. FARLEE: But I think the wording
9 says replace.

10 MEMBER ALBERTI: Well, it says replace
11 seven --

12 MS. FARLEE: But that --

13 MEMBER ALBERTI: It says 712.1, and it
14 doesn't talk about the rest of the section.

15 So, yes, I understand your confusion
16 and I will -- my recommendation to the rest of
17 the Board will be to retain that in -- and clear
18 up the fact that we're -- if we all agree, we'll
19 renumber the rest of the section.

20 MS. FARLEE: All right, thank you.

21 MEMBER ALBERTI: All right, and then
22 I'll pause there. I just wanted to make sure I

1 made that comment.

2 CHAIRPERSON MILLER: Mr. Silverstein?

3 MEMBER SILVERSTEIN: Thank you. Thank
4 you, especially Dante and Ms. Ferrando.

5 I want to talk first, because this was
6 the first issue that was brought up, about the
7 cease and desist and the problems with other
8 agencies perhaps, having errors and failure to
9 follow up or failure to notify.

10 He brought up some specific real-world
11 examples, and I'm not going to ask you to name
12 clients, but I'm going to ask both of you if you
13 have any real-world examples of that -- those
14 types of things involving your clients, and also,
15 if you have any suggested fixes to the rulemaking
16 itself, understanding what we are trying to
17 accomplish, but eliminating these unintended
18 consequences.

19 MR. KLINE: Sure. I'll give you my
20 best one. I had a client who received their
21 restaurant license renewal, this was in the days
22 before actually, the urging of our association,

1 that Department of Health changed their -- and
2 DCRA changed the requirements.

3 But he received his restaurant license
4 renewal, signed it, sent in the check to DCRA by
5 mail. We do not urge any of our clients to send
6 anything by mail, but it did happen, and seven
7 months later, seven months later he received it
8 back with a notation that there needed to be
9 included, a health inspection, and
10 coincidentally, they had had a health inspection
11 within -- and it had to be within the previous 30
12 days.

13 They had had a random health
14 inspection. So, they photocopied the health
15 inspection and they put it back in the mail, and
16 they never heard anything else until an inspector
17 came in and said, "Your restaurant license is
18 expired. We are closing you down."

19 They were prepared to close them down,
20 until my office intervened and I think the words,
21 front page metro section might have been used,
22 but they did not close them down. But it was

1 touch and go, in terms of whether they were going
2 to close them down.

3 So, those things happen, and
4 unfortunately, they happen more than we would
5 like. DDOT and some other agency right now,
6 where we have tremendous frustration getting what
7 we need to show that are people are in
8 compliance, and again, I state what I said during
9 my initial testimony, what's the problem we're
10 trying to solve here?

11 I mean, regulations are great, but in
12 my humble opinion, regulations should be thought
13 about when there's a specific problem that needs
14 to be addressed, and I just don't know what --
15 what problem, and I associate myself with the
16 comments that were made by my colleague, with I
17 think are excellent, and hadn't really thought
18 through, but I think they're all on point.

19 There are due process considerations.
20 So, I would just ask the Board to think about why
21 do we need this? What is the problem? What are
22 we trying to do?

1 MR. PASCAL: I would just like to add,
2 you know, I don't do as much in the way of
3 licensing as some of the others, but I'm here as
4 Counsel for the Association of Wholesalers, and
5 I'm always concerned about the good health and
6 standing of our customers, and that is why my
7 wholesalers have me come and testify, because we
8 have 1,900 licensees in the city. We need to
9 have an orderly process because, you know, I keep
10 a computer program and periodically, we get
11 information that someone's license isn't in good
12 standing. We have to get a hold of the Board.

13 So, my comments were based on at least
14 my knowledge that issues are occurring out there,
15 and I can tell you, I've had trade name
16 registration issues come up. I've had corporate
17 issues, where the registered agent left the city
18 and then they suddenly found that their
19 corporation was delisted, which would trigger
20 under your rules -- and they just really didn't
21 know.

22 So, it happens out there. I mean,

1 we're dealing with an agency with many different
2 licensing functions. You don't go to one stop for
3 a license in D.C. anymore. You have to go to many
4 different things, and somewhere along the line in
5 that chain, you're going to have a problem.

6 CHAIRPERSON MILLER: Others? Mr.
7 Kline, I heard you say in your testimony,
8 regarding the egregious standard that there was -
9 - there is an importance to education that comes
10 with a warning.

11 MR. KLINE: Yes.

12 CHAIRPERSON MILLER: Could you
13 elaborate on that?

14 MR. KLINE: Yes, sale to minors is
15 obviously pretty basic. So, I don't want to -- I
16 don't want to give the Board the impression that
17 this is not on operator's minds.

18 But there are a lot of requirements in
19 the ABC law and the other laws, that apply to
20 these businesses, and you know, those that run
21 businesses know that -- a couple things.

22 One, there are a lot of requirements.

1 Two, unless you're strictly a single store mom
2 and pop, and you're there all the time, you have
3 to rely on employees, you have to rely on
4 managers, and you have to rely on the employees
5 that work for those managers.

6 So, the education component is when
7 there is a violation, if there is a fine, that's
8 certain an education. If there is a violation
9 that leads to a warning, that's also an education
10 because it's, "Hey, I got to pay more attention,"
11 and no matter what the circumstances, the law is
12 that those under 21 are not to be sold or to
13 consume alcohol in our members premises.

14 The penalties, as the Board knows, are
15 -- you know, can be pretty steep and they
16 escalate pretty quickly and the warning is --
17 could be a wake up call, and as I've said, I
18 mean, I've spoken to the director about this on
19 many occasions and my impression is, unless he's
20 misleading me, the system of warnings seems to
21 work pretty well.

22 You know, and there are places that

1 get a warning and never have another problem, and
2 the Council, in their infinite wisdom, think of
3 it what you will, decided a few years ago, that
4 this should be in the law and that it was fair
5 that establishments be given written warnings for
6 first offenses, except for egregious violations.

7 As I said before, we're now on our
8 third attempt to expand that definition, or at
9 least third, it might be the fourth, to expand
10 the definition of egregious, which necessarily
11 narrows the number of establishments that gets
12 warnings, and we don't see the harm in the
13 warning.

14 If the Board has an issue and does not
15 like what's going on or there are specific
16 concerns, then you have the resources to send
17 investigators back in, and if they are going to
18 repeatedly violate, they can certainly be caught
19 and given the funding that I know is there, that
20 comes from a grant from the Federal Government,
21 the ability is to go back in and police these
22 places and look and make sure that they're not

1 repeat offenders.

2 So, we think the education component
3 is very important. We think in the -- as we've
4 talked about previously, the warnings in the
5 first offense, non-serious violations has worked
6 very, very well doing its part, and we think in
7 the sale to minors, it's worked well also.

8 CHAIRPERSON MILLER: Okay, so, I
9 wasn't here for the first round when 'egregious'
10 was first assigned, and Mr. Rodriguez and Mr.
11 Short weren't there in the previous rounds.

12 But do you have an opinion as to why
13 those definitions may be appropriate, but the new
14 ones may not be? You know, the first one.

15 So, well, go ahead. You know how
16 there are three? I mean, if they're agreeing --
17 if it comes from an agreement that the third one,
18 a year or two ago.

19 MR. KLINE: Yes.

20 CHAIRPERSON MILLER: Patterns.

21 MR. KLINE: Yes.

22 CHAIRPERSON MILLER: Patterns.

1 MR. KLINE: I mean, willful is
2 certainly -- there is no question. I mean, if
3 somebody willfully serves people who are
4 underage, and we've had conversations, "Well, how
5 do we prove that?"

6 Well, and we've had conversations
7 about that, as well, if you are marketing to an
8 audience that is underage, for example, you're
9 distributing flyers in a high school, and your
10 investigators go into a place and there are a
11 bunch of high school students, then I think the
12 Board can infer that that's willful, that they
13 set out to lure people who are underage, into
14 their establishment, and then sold them alcoholic
15 beverages in violation of the law, and it seems
16 pretty clear, that that's willful.

17 So, that one is easy. The other one
18 is, you ask for an ID, you're not given an ID,
19 and you sell anyway. Well, obviously either your
20 policy is that you ID everyone, and which is, you
21 know, certainly a commendable policy and
22 appropriate for certain places, or you had reason

1 to believe that that person was underage, so you
2 asked them for an ID.

3 So, under those circumstances, we
4 agree, you sell under those circumstances, yes,
5 that's more than an employee just simply, you
6 know, getting too busy, not paying attention, or
7 another circumstance. So, we think that those
8 are pretty clear.

9 CHAIRPERSON MILLER: So, on the other
10 hand, can you address what you think is not good
11 about the additional recommendations?

12 MR. KLINE: Other than this is the
13 third time or fourth time we're doing it?

14 CHAIRPERSON MILLER: Well --

15 MR. KLINE: I mean, under 17, it
16 shouldn't happen, but people look all different
17 ways. My wife started college at 16, okay, and
18 would have been with people who in those days,
19 were of age, which in this instance was 18, but
20 it just seems sort to arbitrary.

21 I mean, you don't -- you know, to pick
22 an age -- places need to be careful, and I want

1 to be clear. I mean, our association wants our
2 members in compliance and I don't want that to
3 get lost. I mean, I don't want that
4 misunderstood.

5 We see the warnings as tool to do
6 that. The 17 seems just arbitrary. There are --
7 we've all known 14 year olds that could pass for
8 25, and we've all known them. So, to just pick
9 and age and say, "Well, ghee, you don't get the
10 benefit of a warning, because this person
11 happened to be 17 and," or 16, or whatever the
12 case may be, instead or 19, three or more minors
13 under the age of 21, that's another situation
14 where -- and we've seen them, where --
15 particularly with our friend in China, who got
16 put out of business, and I'm sure has been
17 replaced by four more, where they make, you know,
18 good fake ID's, and I think the warning again,
19 can be a wake up call to that place, you had five
20 people in there who were underage. You're
21 getting a warning this time. But next time,
22 don't expect any leniency. You know, you're going

1 to get the max. Don't expect state days. That
2 may be what we normally do.

3 The Board has other tools, is the
4 point. It may be that there is a standard staff
5 settlement, but there may be situations where on
6 a second offense, after a warning the Board says,
7 "We're not going to do the staff settlement."

8 I mean, this is the second time we
9 have found five or ten people who are underage in
10 your establishment consuming. We're bringing you
11 in and you're going to hear from all seven of us
12 about how we feel about that, and then when we're
13 done, you're getting the max with no stayed days
14 and a full fine.

15 I mean, you have the resources at your
16 disposal to deal with those situations, and we
17 would just submit, I mean, I have clients,
18 several clients, and this didn't used to be the
19 case, each of whom have six or more places that
20 yes, it's their responsibility to manage them and
21 run them and be in compliance with the law.

22 If that means they have six different

1 managers who then have 'x' number of employees
2 and everyone can have a bad night, and we think
3 that the warning again, is that education
4 component, where -- you know, in these
5 organizations, that have this many restaurants,
6 if that happens, heads are going to roll.

7 You don't get five or six or seven or
8 ten restaurants by not paying attention to
9 business, but every once in a while, something
10 can happen.

11 I mean, checking identification,
12 that's the same thing we've talked about. I mean,
13 that was -- when this was passed through the
14 committee and by the Council, the example of not
15 checking identification was one of the ones that
16 was given, and I know that the time, and at that
17 time, I think the first attempt to expand this
18 was to say if you don't check identification,
19 that's egregious.

20 No, that is -- that situation was
21 exactly one that was talked about by the Council,
22 and now, we're talking about if there are two or

1 more without checking ID, that somehow that that
2 makes it that much worse, where you don't get a
3 warning.

4 Intentionally, we've talked about.
5 That's the current law. So, I think that deals
6 with all of them.

7 CHAIRPERSON MILLER: Okay, all right,
8 I appreciate that, yes.

9 MR. FERRANDO: Can I make a --

10 CHAIRPERSON MILLER: Sure.

11 MR. FERRANDO: I have a couple of
12 things. One, something is a first-time offense,
13 my feeling is that the Board's goal should be to
14 try to fix the problems, not punish the licensee,
15 though obviously, if the licensee is intending to
16 sell to a minor, that's a very different
17 situation.

18 But we should be looking to be fixing
19 problems such as, are they training their
20 employees right, do they have the proper
21 procedures, and I think these additional things,
22 two or more people and things like that, it's the

1 same procedural problem, or poorly trained
2 employee serves one person or serves a group,
3 they made a mistake.

4 The owner needs to know that they've
5 made a mistake and try to fix that problem. I
6 think that's the concept of the warning.

7 As a licensee, a warning is really
8 scary. I mean, you get busted, whether it's a
9 fine or a warning, you know you got in trouble.
10 You know that's one strike and you're on that
11 ladder of strikes against you. You're going to
12 try to fix the problem, unless of course, you're
13 not a good operator. Then that's already
14 breaking the law.

15 So, I think that the idea of fixing
16 problems is pretty important. Also, and I may be
17 totally missing the point on this, but there is -
18 - in the law, I know that we included a -- the
19 person -- in our situation, it was most of the
20 clubs, it's not a situation, like a restaurant,
21 where you're deciding whether to ID. You
22 initially ID everybody on their way in.

1 So, you've already had that, "I've
2 asked you for your ID," and then I would make an
3 exception because okay, you're obviously not 21,
4 so, I might say, okay, let that person have a
5 pass, and then we ask them for ID, and we've had
6 a long debate over that, if you're over 21.

7 MEMBER ALBERTI: Over 21.

8 MR. FERRANDO: Yes, if the person is

9 --

10 MEMBER ALBERTI: You just said under
11 21.

12 MR. FERRANDO: If the person is
13 legally over 30, you would usually give them a
14 pass. So, we've already triggered the ID'ing the
15 person, and as a defense to that, we had a long
16 conversation about this in the Jim Graham's
17 committee meeting, at the -- if the person is
18 ID'ed and we get in trouble for it, and they are
19 over 21, that's in the law as a defense.

20 I'm not sure where it is in the regs,
21 and whether it's -- whether it got put into the
22 regs. I don't know if that ever made it in

1 there.

2 MR. KLINE: I think if you ask for an
3 ID and you're not given one and you serve, you're
4 in violation.

5 MR. FERRANDO: And the laws -- and the
6 new --

7 CHAIRPERSON MILLER: But you're not
8 serving to a minor if they're over 21.

9 MR. KLINE: What's that?

10 CHAIRPERSON MILLER: You're not
11 serving to a minor if they're over 21.

12 MR. FERRANDO: But the way the law as
13 originally written, it was a violation to sell a
14 drink. If I ask you -- you walk in and I ask you
15 for your ID and you say, "No, I don't have one,
16 sorry," and then I serve you a drink, the way the
17 law was written before, that was not allowed. It
18 was illegal, and then we put in that that was --
19 there was a defense, if you are actually over 21,
20 that would be the defense, and it would be nice
21 to see that somewhere in the regs, since if feel
22 like that's kind of --

1 CHAIRPERSON MILLER: Okay, yes, all
2 right.

3 MR. KLINE: And just one more point on
4 this, because to us, it's so important.

5 CHAIRPERSON MILLER: I know.

6 MR. KLINE: It is -- and Mr. Pascal
7 reminded me of this. We've raised it before.

8 The underage, those that seek to drink
9 underage, they're -- they don't get punished. I
10 mean, there is -- nothing happens to them. I
11 mean, they -- the -- you know, supposedly, if
12 they give a fake ID, then they're suppose to get
13 sanctioned, but unless the officer sees it, it
14 doesn't happen.

15 So, it's known -- it's known among
16 those that are underage that it's open season in
17 the District, that they can come in here -- into
18 the District and drink, they can't do it in
19 Maryland, can't do it in Virginia, but they can
20 do it in D.C., which means there is this chess
21 game going on, okay, where these kids -- you
22 know, because they know nothing is going to

1 happen to them.

2 They only thing that they're putting
3 at risk is the operator, and the poor bartender,
4 and I had a case, I've told it so many times,
5 you've probably heard it, she was 22.

6 So, you know, the Council keeps
7 saying, "Oh, these kids, we don't want to put a
8 mark on these kids records, who go out and drink
9 alcohol." What about the young woman behind the
10 bar? Putting away -- working her way through
11 school, and she forgot to check an ID, and she
12 ends up in a criminal proceeding, which
13 fortunately, in that case was dropped, because
14 the woman was headed to Habitat for Humanity, and
15 we convinced the prosecutors that maybe this
16 wasn't a good case to pursue.

17 But I mean, you see the imbalance.
18 So, you know, we're stuck with it and the kids,
19 you know, give us a break, that is -- yes.

20 MR. PASCAL: This is an issue. You
21 know, I'm a director of the Washington Regional
22 Alcohol Program. They're the ones that put on

1 this sober-ride.

2 We actually train hundreds, if not
3 thousands of youngsters in high school. We just
4 added Cinco de Mayo on our sober-ride program.

5 The industry spends more money on
6 responsible drinking, both as to drunk driving
7 and underage, but we really are stymied on the
8 youngsters walking free, and yet, the licensees
9 facing issues.

10 I'm not too certain legislatively,
11 that it will ever happen, at least based on the
12 composition of the City Council and the opinion
13 of the police department, not wanting to have
14 extra work, but it's an issue, which really leads
15 to the need to have a warning, because the kids
16 are making the constant pressure on the
17 entrepreneurs.

18 MR. FERRANDO: We've been told
19 constantly, you bust people, we all know we're
20 very surprised and we see them get in trouble for
21 it. They actually -- that's something that they
22 usually don't see, that you guys got us in

1 trouble, because they're so familiar with the
2 idea that they don't have to bust somebody for
3 using their older sister's ID, or something like
4 that. "Well, why do you care?" It's not really
5 against the law. It's not a big deal. You know,
6 they don't get it.

7 CHAIRPERSON MILLER: And what's the
8 difference between D.C. and Maryland and Virginia
9 on this?

10 MR. KLINE: In Maryland and Virginia,
11 they will cite them.

12 CHAIRPERSON MILLER: They will cite
13 them?

14 MR. KLINE: If the kids are caught in
15 an establishment drinking underage, then they get
16 cited.

17 MR. FERRANDO: The police would write
18 them the same ticket they would if they smoked
19 marijuana. It's just a small ticket.

20 MR. PASCAL: We're not really seeking
21 criminal action. I think what I've always said, I
22 want some kind of diversion program, you know,

1 where they maybe have to go spend some time in a
2 class, just like our members have to spend
3 training programs, and then their record would be
4 expunged, but you know, and I guarantee you, if
5 some youngster at George Washington University is
6 run through that program, that's going to be a
7 shock that goes through the whole campus.

8 MS. HIRAO: If I may, I also am --

9 CHAIRPERSON MILLER: Okay, if you --

10 MEMBER ALBERTI: No.

11 CHAIRPERSON MILLER: -- can come -- do
12 you want to come to the table and introduce
13 yourself?

14 MS. HIRAO: Risa Hirao, also with D.C.
15 Association of Beverage Alcohol Wholesalers.

16 In Maryland and in Virginia, if you
17 speak to one of the investigators, I have a
18 concern about the technological advancements on
19 how these kids can get a hold of a fake ID,
20 complete with holograms, looks like the real
21 thing.

22 The investigators at Virginia ABC and

1 Maryland -- in Montgomery County, they'll say if
2 I can't tell if it's real, we won't cite the
3 retailer, but here in D.C. it seems like the --
4 the retailer is not given a second change.

5 We have encountered cases that come
6 through our office, where the retailer has the
7 computer, the books, everything in hand, but the
8 card turned out to be fake. It was an underage
9 person trying to buy beer, and despite explaining
10 the situation to the Board, they were cited.

11 So, these are serious issues to think
12 about, as you're going forward with the
13 rulemaking, especially with sales to minors.

14 MR. PASCAL: I'm aware of one store
15 owner that just sold her business, because she
16 couldn't put up with it anymore. She was near a
17 university. She said, "I just can't deal with
18 this constant pressure of the youngsters," and
19 she sold her business.

20 MR. FERRANDO: It's a very strange
21 catch-22 with the ID situation, because we take
22 ID's from people if they appear to be fake, but

1 it's -- or they're not using -- if we think it's
2 an older sister's ID.

3 But technically, we're not allowed to
4 in some cases and you're put in a very awkward
5 position with somebody with a very good fake,
6 because we feel like you guys will get us in
7 trouble, if we let somebody drink on what could
8 be a fake ID, but if you ask them and take
9 somebody's real ID, you're stealing their
10 property.

11 It's a tough situation without having
12 any enforcement action against the actual
13 violator, the kid who is trying to get that.

14 CHAIRPERSON MILLER: Mr. Silverstein?

15 MR. FERRANDO: I totally agree, the
16 very small amount of enforcement on that front
17 can send shock waves through the community and a
18 lot of the bad actors would probably be a lot
19 safer, a lot less inclined to try to -- so.

20 MEMBER SILVERSTEIN: Well, it seems
21 like you're barking up the wrong tree or not
22 barking at all.

1 If this is such a problem, and I --
2 from my experience, I agree with you. I mean,
3 you're not the only one who confiscates. There
4 are places that have chests full of them, and you
5 know, hundreds or thousands of them over the
6 years.

7 The question is, why haven't you gone
8 to Council, and asked that this -- that the law
9 be changed and that those who are underage and
10 are committing this crime, and it is a crime,
11 false ID, under the Patriot Act it certainly is,
12 why are you not going there, and saying that they
13 be cited, not that this end up being a Scarlet
14 Letter against them for life, but this is -- this
15 is creating a difficult situation for your
16 clients. Why don't you make that job number one?

17 MR. KLINE: We have.

18 MR. PASCAL: You've got to bear in
19 mind, some Council members are associated with
20 the universities, and I won't say anymore.

21 MEMBER SILVERSTEIN: Really?

22 MS. HIRAO: Just for the record, there

1 was a Bill, I think it was introduced by Council
2 Member Alexander, and our Association raised the
3 serious issue of fake ID's.

4 Unfortunately, I don't think it went
5 anywhere, but we testified at length, about the
6 concern of how these fake ID's will jeopardize
7 businesses and that there is no penalty to these
8 people who purchase, and tried to put the
9 retailer at risk.

10 MR. KLINE: But Mister --

11 MS. HIRAO: We have raised this issue.

12 MR. KLINE: Mr. Silverstein, we have.
13 We went to the Council, and it was a last
14 concerted effort, maybe six or seven years ago,
15 and we -- you know, every time there is a Bill,
16 we make that push, and a certain Ward 2 Council
17 Member said that --

18 MEMBER RODRIGUEZ: Is there more than
19 one?

20 MR. KLINE: Said that -- well, it's
21 been over the years.

22 MEMBER RODRIGUEZ: Ward 3 also.

1 MR. KLINE: Said that he didn't want
2 to see, you know, kids caught up in -- you know,
3 kids are kids and that's that, and seemed to have
4 no sympathy for my story, for the 22 year old kid
5 who ended up getting hauled -- you know, they
6 don't get hauled away, but they get a citation
7 and they have to appear in Criminal Court, as a
8 defendant, because she was simply negligent, and
9 the kids that go out to drink, seek to
10 intentionally break the law. Now, think about
11 that.

12 You know, other than those people that
13 willfully sale -- willfully sell to those
14 underage, everyone else is just careless.
15 They're just negligent, but the kids that
16 willfully go out to break the law, we can't get
17 the Council to do anything to them, and it's very
18 frustrating.

19 MR. FERRANDO: We've petitioned the
20 police just to write tickets and just a fine, and
21 we're told, "Like, oh, we don't really have the
22 resources or the ability to do that," like it

1 came down to, "We don't have a ticket book, that
2 will deal with that kind of violation." They
3 just don't have any interest.

4 MEMBER SILVERSTEIN: Thank you.

5 CHAIRPERSON MILLER: Okay, anything?

6 MEMBER SHORT: I just have one
7 comment.

8 CHAIRPERSON MILLER: Mr. Short, yes.

9 MEMBER SHORT: This is especially to
10 the attorneys, but to the whole panel.

11 You petitioned our Council to change
12 the law, but Council will not do that, correct?

13 MR. PASCAL: We helped write it.

14 MEMBER SHORT: I understand that. It
15 didn't go anywhere?

16 MR. KLINE: Right.

17 MEMBER SHORT: Someone has to do
18 something, is that correct? Shouldn't someone do
19 something? If you can't do everything, can't you
20 just do something?

21 MR. KLINE: We think so, yes.

22 MEMBER SHORT: All right, that's all

1 I have. That's all I have.

2 CHAIRPERSON MILLER: Okay.

3 MR. PASCAL: Yes, well, you know, some
4 of us are, you know, aside from practicing down
5 here, we're experienced in dealing with the City
6 Council also, and you know, there's a give and
7 take when you deal with trying to get
8 legislation, and you know, at least we have met
9 solid resistance, based on the current
10 composition of the City Council.

11 So, you know, you don't shoot your
12 load, when you know you're not going to get
13 anywhere, because you have other issues that you
14 have to deal with.

15 I can tell you, if I really felt there
16 was a good chance of doing it, it's the mission
17 of my wholesalers to push hard on this issue, and
18 I've talked with the police department. I've
19 talked as high as the Chief of Police on this
20 issue, and right now, it's not going to happen.

21 So, at the very least, the warning
22 side of it is important for the customers of my

1 wholesalers.

2 CHAIRPERSON MILLER: Mr. Rodriguez?

3 MEMBER RODRIGUEZ: So, I'm new to the
4 Board. I'm a rookie, a year on, but it is
5 frustrating to me, just from listening, and you
6 know, looking at some of the cases, that you
7 know, minors will take advantage and there is
8 nothing -- there is no accountability.

9 Somewhere, it has to be an
10 accountability. We go to the City Council, but I
11 don't know, I think you mentioned an education
12 program that you have with the youth. I think
13 definitely, some kind of education program, a
14 broader education program is in order here, and
15 maybe it will impact the Council at some point.

16 But I think we do have to take some
17 action somewhere, because it does put the
18 proprietor at a risk. I think most proprietors -
19 - all proprietors want to protect their license
20 and their reputation in the community. I
21 understand that.

22 So, I think we have a joint agreement

1 here. I think this Board is just as concerned as
2 you are, about the underage drinking. I certainly
3 am, and I know all my colleagues are very
4 concerned about it, and so, that -- that is --
5 that is something that we need to really work on
6 together, and I do agree that what I see here
7 also that right now, the warning is the only --
8 you know, action that we can take right now, the
9 strongest action right now, a warning, but we do
10 need to work on this, and as a new Board Member,
11 I, you know, pledge to do everything I can.

12 CHAIRPERSON MILLER: Thank you. I do
13 think that our Agency does some work with the
14 universities, yes, as far as education goes.

15 So, you know, that's the other side,
16 and you know, this punishment and this education,
17 if we can improve the education, that's a plus, I
18 think.

19 MR. KLINE: I mean, I made use of that
20 university program, which I've -- I'll find in
21 there, which I think now, is very good, and very
22 helpful, as far as it goes.

1 The problem of course, in the
2 universities is that kids that aren't really
3 interested in that, just don't pay attention to
4 it, and they don't show up.

5 MEMBER RODRIGUEZ: There has to be
6 some consequences for violating the law.

7 MR. PASCAL: George Washington
8 University created -- the students themselves,
9 created a wine club. Apparently, some students
10 from California wanted to be able to have
11 tasting, so they created a wine club there and
12 Risa and I were actually invited to come talk to
13 them about ABC law, and I was impressed that they
14 had a guard at the door, that did check ID, that
15 you couldn't get in there.

16 So, any university student under the
17 -- and I was kind of impressed that it took
18 place. So --

19 MS. HIRAO: Also, I'd like to maybe
20 give the Board a heads up about, you know, fake
21 ID's and how advanced they are.

22 Do a Google search on YouTube. You

1 will see amazing testimonials about a
2 manufacturer overseas and how they are fool-
3 proof. I have encountered several websites which
4 are attached as exhibits to several Council
5 Members for a Bill from last year.

6 There are websites and then people
7 will comment how great these ID's. Kids
8 basically feel immune, and --

9 MR. PASCAL: You know, perhaps if it
10 -- you know, Mr. Moosally tells me that he's
11 considering maybe sending down some proposed
12 legislation, which obviously, he's discussed with
13 you, perhaps if this came from the Board, that
14 could maybe sway some Council Members. It
15 usually comes from the industry because we want
16 to tack it on to some legislation.

17 But if the Board as a body said, "We
18 feel this is important," you know, we'll be
19 behind you, to try to see if that gets --

20 MR. KLINE: I mean, just that --

21 MEMBER SILVERSTEIN: All of us are
22 fully aware --

1 CHAIRPERSON MILLER: We are.

2 MEMBER SILVERSTEIN: -- of just how
3 serious a problem this is. This is one of the
4 reasons that we're -- we're trying to address
5 this from every angle, because this is a serious
6 problem and somewhere down the road, if we don't
7 do something and somebody wraps themselves around
8 a tree, we're never going to forgive ourselves.

9 MR. PASCAL: Well, you know, that is
10 --

11 MEMBER SILVERSTEIN: Nor should any of
12 us.

13 MR. PASCAL: That's what started the
14 keg law, if you remember. Fox Hole Liquor sold a
15 keg to an 18 year old girl who got killed out in
16 Fairfax County, and that's what started the keg
17 law and as a matter of fact, the industry helped
18 the Board in getting that keg registration
19 legislation.

20 MR. KLINE: The last time we went at
21 this, just so you know who was involved, it was
22 our Association, Restaurant Association

1 Metropolitan Washington, Paul's association, the
2 wholesalers, RRAP, the Washington Regional
3 Alcohol Program, the nightlife association and I
4 know I've spoken to Assistant Chief Burk about
5 this many times, and they whole-heartedly support
6 it, and we still could not get any traction.

7 So, maybe Mr. Pascal is correct, if it
8 comes from the Board, then we can all pile on and
9 nudge, nudge and maybe it will get further, I'm
10 not sure, but I would certainly --

11 MEMBER SHORT: Mr. Pascal?

12 MR. KLINE: -- will try again.

13 MEMBER SHORT: I'm very familiar with
14 that liquor store where the keg law was passed on
15 Fox Hole Road.

16 Would you care to address -- would you
17 consider that person who formerly owned that
18 business, was he egregious?

19 MR. PASCAL: Well, it -- that -- you
20 can look at your own record and get an answer on
21 that.

22 MEMBER SHORT: Okay, all right.

1 That's it. Just wanted to get that one on the
2 record.

3 MR. PASCAL: No, there is -- you have
4 quite a record about Fox Hole Liquor, so --

5 MEMBER SHORT: Yes.

6 MR. PASCAL: So, you can look at your
7 own record and get your own answer on that.

8 MEMBER SHORT: Okay.

9 CHAIRPERSON MILLER: All right, any
10 other questions? Okay, well, yes?

11 MS. FARLEE: I know you said the
12 hearing was about only 712.1, but the roundtable
13 on March 4th covered more -- the whole pub crawl
14 concept, and that's what my comments related to.

15
16 So, I hope you will consider them in
17 the context of the whole 712.

18 MEMBER ALBERTI: Yes, we will.

19 CHAIRPERSON MILLER: Absolutely.

20 MEMBER ALBERTI: We have your written
21 comments.

22 CHAIRPERSON MILLER: There are more

1 comments than the pub crawl comments? Do you
2 have other comments than the pub crawl comments
3 or is that it?

4 MS. FARLEE: Pub crawl.

5 CHAIRPERSON MILLER: Okay, yes, we'll
6 definitely consider them.

7 MS. FARLEE: Thank you.

8 CHAIRPERSON MILLER: Okay, anything
9 else?

10 MS. FARLEE: Is there a deadline for
11 commenting on this now?

12 CHAIRPERSON MILLER: Yes, they are --
13 you can submit written comments to us up until
14 4:00 p.m. on Friday, May 8th, 2015.

15 Well, thank you all for coming down.

16 MR. PASCAL: Thank you.

17 MR. KLINE: Thank you for having us.

18 CHAIRPERSON MILLER: Okay, so, that
19 concludes our morning hearings and we're going to
20 adjourn until 1:30 p.m.

21 (Whereupon, the above-entitled matter
22 went off the record at 12:40 p.m.)

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